

FCC MAIL SECTION

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Federal Communications Commission

DA 99-1220

DISP
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-222
Table of Allotments,)	RM-9407
FM Broadcast Stations.)	
(Lordsburg and Hurley, New Mexico))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 16, 1999

Released: June 25, 1999

By the Chief, Allocations Branch:

1. At the request of BBC Radio ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 13 FCC Rcd 23551 (1998), proposing the substitution of Channel 288C1 for Channel 289C3 at Lordsburg, New Mexico, the allotment of Channel 288C1 to Hurley, New Mexico, as the community's first local aural service, and the modification of its construction permit (BPH-970725MO) to specify Hurley as its community of license. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. No other comments were received.

2. As stated in the Notice, petitioner seeks to provide Hurley, a community of 1,534 persons, with its first local aural service under the provisions of Section 1.420(i) of the Commission's Rules. While Hurley is smaller in population than Lordsburg, we proposed the change in community since it could provide Hurley with its first local aural service, as well as enabling the station to operate on a higher powered channel, thus increasing the population it could serve from 3,370 people, as a Lordsburg service, to 45,940 persons, as a Hurley service. In addition, Lordsburg would continue to receive local aural service from FM Station KQTN, as well as potential service from Channel 279C3, which is presently unoccupied and unapplied for. Further, while the deletion of Channel 289C3 from Lordsburg would result in a loss of service to 2,972 persons within a 2,869 square kilometer area, this loss represents a potential, rather than an actual, service since petitioner's station at Lordsburg is presently unbuilt. In addition, over 50% of the loss area would continue to receive three or more FM services. Finally, neither Lordsburg nor Hurley are located within an Urbanized Area and a station operating on Channel 288C1 at Hurley will not provide service to any Urbanized Area.

3. We believe the public interest would be served by substituting Channel 288C1 for Channel 289C3 and reallocating the channel from Lordsburg to Hurley, New Mexico, as the community's first local aural service. Channel 288C1 can be allotted to Hurley in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.6 kilometers (5.9 miles) north to avoid a short-spacing to Channel 288B, El Porven, Chihuahua,

Mexico, and to accommodate petitioner's desired transmitter site.¹ Mexican concurrence in the allotment has been obtained since Hurley is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 9, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Hurley, New Mexico	288C1
Lordsburg, New Mexico	250C, 279C3

5. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of BBC Radio for BPH-970725MO IS MODIFIED to specify operation on Channel 288C1, in lieu of Channel 289C3, and to specify Hurley, New Mexico, in lieu of Lordsburg, New Mexico, as its community of license, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301).
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

6. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, BBC Radio, permittee of BPH-970725MO, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

¹ The coordinates for Channel 288C1 at Hurley are 32-47-00 North Latitude and 108-08-30 West Longitude.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau